

### **REMARKS**

This is a full and timely response to the non-final Office Action of June 6, 2005. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this First Response, claims 1-22 are pending in this application. The specification and claims 1, 6, 7, 9, 16, and 17 are directly amended herein. Further, claims 20-22 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

### **Response to Claim Objections**

Claims 1, 6, 7, 9, and 16 are objected to as allegedly containing various informalities. Applicants assert that claims 1, 6, 7, 9, and 16 have been amended herein thereby mooted the objections to these claims. Applicants assert that the claims have been amended herein to more clearly define the scope of these claims, not in an effort to distinguish the claims from the cited art. Indeed, for at least the reasons set forth hereinbelow, it is believed that the claims as originally filed are allowable over the cited art. Moreover, Applicants respectfully request that the claim objections be withdrawn.

### **Response to §102 Rejections**

Claims 1-7 and 9-18 presently stand rejected under 35 U.S.C. §102 as allegedly being anticipated by *STT Next-Generation Optical Network Solution*, Sunrise Telecom (referred to hereafter as “Sunrise Telecom”). Applicants respectfully assert that Sunrise Telecom is not a proper prior art reference under 35 U.S.C. §102 for at least pending independent claims 1, 6, 7, 9, 16, and 17, and the 35 U.S.C. §102 rejections of these claims is, therefore, improper.

In this regard, submitted herewith is a Declaration under 37 C.F.R. §1.131 establishing that the inventions defined by at least independent claims 1, 6, 7, 9, 16, and 17 were conceived of and reduced-to-practice prior to the publication date of Sunrise Telecom. In particular, the Declaration establishes that a test unit embodying the inventions described by at least claims 1, 6, 7, 9, 16, and 17 was advertised in a magazine in Europe and was shipped to at least one European customer prior to October 3, 2003. Thus, Sunrise Telecom is not a proper prior art reference pursuant to 37 C.F.R. §1.131.

For at least the above reasons, Applicants respectfully submit that the 35 U.S.C. §102 rejections of at least independent claims 1, 6, 7, 9, 16, and 17 are improper and, therefore, should be withdrawn. Further, claims 2-5, 10-15, 18, and 20 respectively depend from the allowable independent claims 1, 6, 7, 9, 16, and 17, and these dependent claims 2-5, 10-15, 18, and 20 are, therefore, allowable as a matter of law. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Accordingly, Applicants respectfully request that the 35 U.S.C. §102 rejections of claims 1-7 and 9-18 be withdrawn.

Further, with respect to new claims 21 and 22, it is believed that the prior art fails to disclose or suggest each feature of these claims. Therefore, claims 21 and 22 are allowable.

### Allowable Subject Matter

Claims 8 and 19 have been indicated as allowable by the outstanding Office Action if such claims are rewritten to include the limitations of their respective base claims. However, claims 8 and 19 respectively depend from and include all of the limitations of independent claims 7 and 17. For at least the reasons set forth hereinabove, Applicants assert that claims 7 and 17 are allowable, and claims 8 and 19 are, therefore, allowable as a matter of law. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicant respectfully submits that claims 8 and 19 are allowable in their present form.


### CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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